



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council on Renewal of the False Claims Act and an Extension to and Notification of Whistleblower Protections April 16, 2012

Good morning Chair Brewer and members of the Governmental Operations committee. Thank you for the opportunity to testify today on renewal of the False Claims Act and extension to and notification of the whistleblower protection laws.

Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. Integral to our mission are efforts to achieve effective, efficient, accountable and open government. It is within this context that we evaluated the bills being considered by the Governmental Operations committee today.

Renewal of the False Claims Act

The False Claims Act aims to uncover fraud and corruption in city government, goals Citizens Union wholeheartedly supports, by rewarding whistleblowers who bring claims of fraud to the attention of the city's Department of Investigation and the Law Department. Enacted in 2005, the False Claims Act has been infrequently utilized. In ten actions, the city's Corporation Counsel has pled a claim under the act, six of which resulted in monies recovered through settlement for wrongdoing like fraudulent billing and royalty claims.¹ However, despite the receipt of 23 civil complaints under the Act, the Corporation Counsel did not take action on 17 of these (6 are still pending) largely because the majority of complaints were Medicaid claims which come under the jurisdiction the state's False Claims Act.² In effect, no complaints have ever resulted in a civil enforcement proceeding occurring under the Act.

Citizens Union supports the renewal of the False Claims Act as we fully support the intent of the legislation and a review of legal actions since its passage shows that it has not led to a significant increase in the number of lawsuits or administrative costs to the city. Indeed the very existence of the Act may deter the fraudulent activity it seeks to prevent or punish. Given the relative infrequency with which claims have been filed under the Act, we recommend the following enhancements as part of the legislation's renewal:

¹ Oversight: Examining the Usage and Efficacy of New York's False Claims Act. Briefing Paper of the Governmental Affairs Division, Committee on Governmental Operations, New York City Council. January 20, 2012.

² Ibid.

1. Plaintiffs should be permitted to commence a civil enforcement proceeding without permission from Corporation Counsel, as is allowed in the state's False Claims Act. The city's False Claims Act prevents the plaintiffs from doing so without the permission of Corporation Counsel. While plaintiffs have the ability to bring an action on their own on behalf of a local government through the state's False Claims Act, it requires they shift jurisdictions after initiating a civil complaint through the city proceeding. If plaintiffs continue to be barred from the right to bring cases without the permission of Corporation Counsel, the city's Corporation Counsel should at minimum be required in law to make complainants aware of their ability to bring the same complaint to the state with the potential for unilaterally bringing the case. Exceptions to civil enforcement actions pursuant to section 2(b)(3) and 2(c) should remain in place even if plaintiffs are permitted to commence a civil enforcement proceeding.

2. The False Claims Act should be extended to cover complaints related to local tax law consistent with the State Claims Act that allows for complaints to be brought in relation to this area of law. During these challenging fiscal times, Citizens Union believes that laws related to taxes should be fully enforced, and opportunities should be provided to ensure instances in which taxes are not paid to the city can be reported. Certain actions barred under section d of the bill should apply to civil complaints regarding local tax law so that, in particular, claims are not made for values of less than \$25,000.

Citizens Union does not have a position on increasing the percentage of payouts to those persons bringing civil complaints to 15-25 percent rather than 10-25 percent in instances in which Corporation Counsel has pled a claim, and to 25-30 percent from 15-30 percent in instances in which a person commenced a civil enforcement proceeding with the permission of the Corporation Counsel. This may make sense to better incentivize individuals to bring complaints given that no complaints since 2005 eventually led to civil proceedings. For that same reason, it would seem to cost the city next to nothing in funds.

Int. No. 816

Similar in spirit to the False Claims Act is the No-City Employee Whistleblower Protection Act, or Int. No. 816. The Whistleblower Protection Law currently provides protections for whistleblowers from retaliation by city officers or employees if they make a "report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city..."

Citizens Union believes whistleblower protections are integral to ethical and accountable government and strongly supports this bill which will extend the current

law to employees of contractors with the city, rather than simply employees of the city. The necessity of this bill can hardly be overstated. The city has experienced a dramatic rise in private-sector contracting, totaling 17,000 different contracts valued together at \$10.5 billion or 1/7 of the City's budget.³ Meanwhile, 90 percent of the 27,538 complaints to the city's Department of Investigation over the last two years have come from anonymous sources, many of whom were public employees, demonstrating the importance of protections for whistleblowers.⁴

Citizens Union recommends this bill go further, and provide whistleblower protections for any employees of a subcontractor indirectly doing business with the city.

Subcontractors, less visible and known by the city agencies and entities than primary contractors, are more likely to escape scrutiny that ensures government is accountable. On the scandal-ridden CityTime project, it was subcontractor Technodyne that ultimately received \$450 million of the more than \$700 million spent on the troubled payroll system.⁵ They are alleged to have engaged in conspiracy in a kickback scheme with the primary contractor, Scientific Applications International Corporation (SAIC).⁶ Technodyne's founders have fled the country and remain at large. Had whistleblower protections been in place, they may not have been able to rip off the city of the hundreds of millions of dollars they did that was only recently repaid in part by SAIC.

Int. No. 479-A

The final bill in the package being considered today is Int. No. 479-A, which requires that city contractors post information about whistleblowers' rights at work sites or risk sanctions for non-compliance. **Citizens Union backs this bill in order to ensure workers are aware of this right, and suggests that such notification also be provided with employment papers like W-2s when employees are first hired. Employees should be required to sign such notification, which should be collected and retained by employers for the length of the workers' employment with the contractor.**

³ Farley, John. "In City Contracts, No Room for Whistleblowers," *Metro Focus*, April 4, 2012. Available at: <http://www.thirteen.org/metrofocus/news/2012/04/in-city-contracts-no-room-for-whistleblowers/>

⁴ Blau, Reuven. "New York City Snitches Account for 90% of Complaints of Wrongdoing Against City Employees," *New York Daily News*, April 2, 2012. Available at: <http://www.nydailynews.com/new-york/york-city-snitches-account-90-complaints-wrongdoing-city-employees-article-1.1054291>

⁵ Hennelly, Bob. "CityTime Payroll Scandal a Cautionary Tale." *WNYC*, June 29, 2011. Available at: <http://www.wnyc.org/articles/its-free-country/2011/jun/29/citytime-cautionary-tale/>

⁶ *Ibid.*